

Page 1 of 3 65124
 RECEIPT OF
 AMOUNT \$ 250
 SUMMONS ISSUED Y-1
 LOCAL RULE 4.1 _____
 WAIVER FORM _____
 MCF ISSUED _____
 BY DPTY. CLK. M
 DATE 6-22-05

**UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS**

CLARA CLEMENS)
 Plaintiff)
)
 V.)
)
 MET LIFE DISABILITY)
 Defendant)

05 CV 11322 GAO

COMPLAINT and JURY DEMAND

MAGISTRATE JUDGE Collings

Nature of Action

Plaintiff brings this action under the Employee Retirement Income Security Act of 1974 ("EISA"), 29 U.S.C. sections 1001 et seq. as amended, and further 29 U.S.C. section 1132 (a)(1)(B) to recover damages for defendant's breach of a long term disability policy purchased and provided as a benefit of the plaintiff's employment by her former employer.

Claims

1. Plaintiff, Clara Clemeno, is an individual residing at 130 George Street Medford, Massachusetts, 02155.
2. Defendant, MetLife Disability is a duly organized corporation with a usual place of the benefits office with a usual place of business in Lexington, Kentucky, 40511-4590, P.O. Box 14590.
3. The policyholder for the Long Term Disability claims for MetLife is the Roman Catholic Archdiocese of Boston located at 2121 Commonwealth Avenue, Brighton, Massachusetts, 02135.
4. Ms. Clemeno stopped working as a school teacher at Pope John XXIII high school on June 14, 2002, with the advice of her doctor after seeking treatment for an osteomy preformed, and removed tendons on November 6, 2002.
5. She then filed a disability claim with a diagnosis of Post Tibial Dysfunction. It was then that Ms. Clemeno filed claim for benefits under the Roman Catholic Archdiocese Long Term Disability Plan, referred to as "the LTD Plan".

6. On June 13, 2002 Ms. Clemeno's disability benefits were approved. After a 90-day period of disability, her disability commenced on September 4, 2002. Her benefits were calculated as 60 percent of her basic monthly pre-disability salary, minus other income benefits. Her monthly salary was \$3, 222.42 prior to her disability, and now her gross total LTD benefit is \$1, 933. 45 (60%).
7. Although all of Ms. Clemeno's doctors continued to support her claim of total disability, the Roman Catholic Archdiocese of Boston LTD Plan decided to terminate benefits based on the medical statements from Dr. Mattingly and Dr. Corbett.
8. By letter dated August 28, 2003 MetLife disability advised Ms. Clemeno that her benefits had been discontinued. In this letter, it was documented that a copy of the medical statements were insufficient to support the existence of a disability as defined by the Roman Catholic Archdioceses of Boston LTD Plan.
9. MetLife cited that Dr. Mattingly does not provide medically documented findings to reflect physical examination or treatment being provided. In addition, the medical documentation from Dr. Corbett does not indicate that Ms. Clemeno has experienced any post surgical complications or that the physical therapy has failed to return physical conditions that were experienced to prior state of functionality.
10. After receiving the notice of termination of benefits, Ms. Clemeno appealed and provided additional information to MetLife including an April 16, 2003 Physical Therapy note, April 29, 2003 letters from Dr. Pastan, Dr. Mattingly's office notes of April 9, 2003 and August 8, 2003 and a note dated from him September 22, 2003.
11. MetLife reviews Ms. Clemeno's file in entirety and identified key elements lacking from the documentation was a detailed description of functional abilities for standing and walking, evidence of swelling or synovitis to the knees, ankles or hips after standing for prolonged periods of time, physical exam findings for decreased range of motion to your hips, knees, and ankles, description of gait and deed for assistive device for ambulation. There was no testing submitted to determine extent of current findings of the right hip, no indications that severe unrelenting pain is present, or indication that additional therapy was prescribed to increase functional abilities.
12. By letter, dated October 15, 2003, informed Ms. Clemeno that they were upholding their decision to terminate her benefits and that she had exhausted her right to administrative remedies under the plan and no further appeals will be considered. This termination was in bad faith, unreasonable, not supported by substantial evidence, and a breach of the terms of Ms. Clemeno's disability policy.

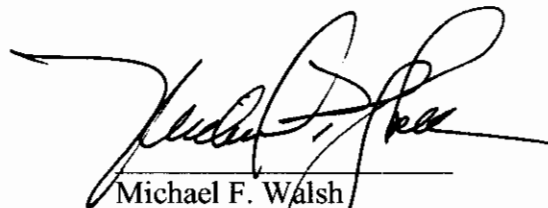
WHEREFORE, the plaintiff prays for the following relief:

1. That the Court enter judgment against the defendant awarding the plaintiff retroactive and present disability benefits together with prejudgment interest, or an amount deemed just by this Court of law;
2. That the Court award-plaintiff her-attorneys' fees, court-costs and all other reasonable costs incurred; and
3. That the Court grants such other and further relief as it may deem just and proper.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY.

Respectfully submitted
For The Plaintiff,
Mary Giorgio
By her attorney

LAW OFFICES OF MICHAEL F. WALSH, P.C.

A handwritten signature in black ink, appearing to read 'Michael F. Walsh', is written over a horizontal line.

Michael F. Walsh
1200 East Street
Westwood, MA 02090
(781) 251-0100
BBO# 550658

Dated: June 6, 2005

JS-44 - 10WA

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

1. (a) PLAINTIFFS

Clara Clemeno, 130 George Street, Medford, MA 02155

(b) County of Residence of First Listed Plaintiff Middlesex
(EXCEPT IN U.S. PLAINTIFF CASES)

(C) Attorney's (Firm Name, Address, and Telephone Number)

Michael F. Walsh,
Law Offices of Michael F. Walsh, PC, 1200 East Street, Westwood,
MA 02090 Tel: 781-251-0100**DEFENDANTS**

MetLife Disability, P.O. Box 14590, Lexington, KY 40511

County of Residence of First Listed Defendant Suffolk
(IN U.S. PLAINTIFF CASES ONLY)NOTE: INLAND CONDEMNATION CASES. USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

05-11322 GAO**11. BASIS OF JURISDICTION (Place an "X" in One Box Only)**

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|-------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Incorporated of Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller-Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 310 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 6-15 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> E 820 Copyrights <input type="checkbox"/> 810 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce ICC Rates etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 U.S.C. 3410 <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 891 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900. Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Action,
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC DIWW(405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 8-10 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 8-1 IRS-Third Pam 26 USC 7,609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of case.)

Plaintiff brings this action under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. sections 1001 et seq. as amended, and further 29 U.S.C. section 1132 (a)(1)(B) to recover damages for defendant's breach of a long term disability policy purchased and provided as a benefit of the plaintiff's employment by her former employer.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if determined in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) INSTRUCTIONS**

IF ANY

and LR 3.1 (e))

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Clara Clemeno v. MetLife Disability

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☒ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

35-11022 GAO

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☐

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☐

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☐

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Michael F. Walsh

ADDRESS 1200 East Street, Westwood MA, 02090

TELEPHONE NO. 1-817-1781-251-0100